Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and Spinco To Assign and Transfer Control of FCC Licenses and Other Authorizations	)))))	MB Docket No. 14-57

COMMENTS IN SUPPORT OF CONDITIONS

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Viamedia, Inc. ("Viamedia") hereby petitions the Federal Communications Commission ("Commission" or "FCC") to act pursuant to its public interest authority[1] to condition the Applications of Comcast Corporation ("Comcast"), Time Warner Cable Inc. ("TWC"), Charter Communications ("Charter"), and Spinco (collectively "the Parties") to assign or transfer control of FCC licenses and authorizations.[2] Even in the current environment of consolidation in the media and telecommunications industry, there has never been a media company like Comcast-NBC-TWC that will control all of the critical choke points: programming, distribution, advertising, technology, data and Internet broadband access. As CNET reported last week in an interview with a Comcast senior executive, *The Future of TV May Be What Comcast Dreams*: "Television is in the midst of its biggest transformation in decades. … [The Comcast-TWC merger] gives Comcast unprecedented sway over TV's future look and feel."[3]

This submission will focus on a subset of the media sector: the cable television advertising industry. Specifically, the market for local television advertising known as Spot Cable Advertising, which cable operators count on as a significant revenue stream. Viamedia appreciates the Commission's detailed inquiry on the cable advertising market and looks forward to continuing to answer questions pertaining to the effects of the proposed transaction on this important issue.[4] In order to ensure the continued future benefits to small business advertisers, small and medium sized multi-channel video program distributors ("MVPDs"), and American consumers resulting from the competitive Spot Cable Advertising market, Viamedia respectfully requests that the Commission mandate a number of conditions.

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[1] *See* 47 U.S.C. §310(d).

[2] *See* Applications of Comcast Corp. and Time Warner Cable Inc. For Consent To Assign Or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57, *Public Notice*, DA 14-096 (rel. July 10, 2014) ("Application").

[3] http://www.cnet.com/news/the-future-of-tv-may-be-what-comcast-dreams-q-a/.

[4] *See e.g.*, Letter from W. Lake, Chief, Media Bureau, to K. Zachem, Comcast Corp., requesting supporting documentation and a written submission in response to an Information and Data Request, MB Docket No. 14-57 (rel. Aug. 21, 2014), ¶¶ 38, 46-49, 80(f).

I. Introduction

Viamedia is the nation's largest independent Spot Cable Advertising representative of cable operators and other MVPDs such as satellite and telecommunications companies. Viamedia has no financial or other ownership interest in either NCC or Comcast Spotlight, which are Comcast-controlled entities in the Spot Cable Advertising market discussed further below. Viamedia offers MVPDs a full turn-key solution that includes the services MVPDs need to sell, bill for, and insert Spot Cable Advertising into their television programming ("Spot Cable Advertising Representation"). Through this same turn-key solution, Viamedia also provides services to facilitate MVPD's commercial advertising to its subscribers which is often times in areas where there is MVPD subscriber competition with Comcast or TWC. Both Comcast and TWC also have Spot Cable Advertising Representation divisions, which are numbers one and two in the industry; however, neither is considered independent because each places advertising to its own subscribers in addition to offering Spot Cable Advertising Representation services to others. Spot Cable Advertising Representation services play an important role in the industry.

Spot Cable Advertising is a $5.4 billion national market. Three different types of advertisers comprise the Spot Cable Advertising industry: national, regional, and local. These advertisers insert advertising spots into the two minutes per hour window on cable networks. While there may be other ways a local advertiser can reach its consumer, there simply is nothing as powerful as the site, sound and motion of television. And certainly nothing as dramatic as being able to advertise on television in a selected market. Thus, the industry set up a pro-competitive ecosystem to streamline advertising for the Spot Cable Advertising industry.

- All national advertisers place Spot Cable Advertising through one national rep firm, National Cable Communications ("NCC"). If the proposed transaction is consummated, NCC will be 80 percent owned by Comcast-TWC.

- Each regional advertiser places Spot Cable Advertising through an entity referred to as an "Interconnect." An Interconnect is both a joint sales and technical integration entity comprised of the MVPDs that offer service in a given market (also known as a "Designated Market Area" or "DMA"). The Interconnect is managed, and therefore controlled, by the dominant MVPD in the DMA. This Interconnect manager is usually Comcast or TWC. (As detailed below, the pro-competitive construct has devolved such that, if the proposed transaction is consummated, Comcast-TWC will control 72 percent of the top 25 Interconnects nationwide.)

- A local advertiser places Spot Cable Advertising directly through a given MVPD or through its Spot Cable Advertising Representation firm. (As stated above and detailed below, the pro-competitive construct has devolved such that, if the proposed transaction is consummated, Comcast-TWC will control the Spot Cable Advertising into 49 million of the 69 million U.S. cable households directly (through its subscribers) and through its Spot Cable Advertising Representation deals. In other words, Comcast would control local Spot Cable Advertising into 71 percent of U.S. cable homes.)

Comcast's acquisition of TWC would result in control of approximately $4.5 billion of the $5.4 billion national Spot Cable Advertising market. Comcast insists that it does not compete against TWC because their respective coverage areas do not overlap. This claim rings hollow with respect to the Spot Cable Advertising market, however. For example, in the New York City DMA which comprises Manhattan and Northern New Jersey, Comcast and TWC *do* compete for advertising revenue against each other as well as against smaller MVPDs.[5] Comcast has its own as well as third party represented subscribers in New Jersey while TWC has its own as well as third party represented subscribers in Manhattan. In addition, they compete in the Spot Cable Advertising Representation business against each other, and against independent representation firms like Viamedia.

The consolidation would result in one less Spot Cable Advertising Representation firm in many U.S. markets and would adversely affect small businesses that place Spot Cable Advertising by increasing advertising rates. These increased rates ultimately harm American

[5] This competition is especially present in New York City, where Comcast and TWC are each members of competing Interconnects today (discussed below). As Comcast notes in its FCC public interest filing in connection with this transaction, Comcast intends to combine those operations post-transaction. *See Applications of Comcast Corp. and Time Warner Cable Inc. For Consent To Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Applications and Public Interest Statement at n.257 (Apr. 8, 2014). This combination would have the effect of reducing competition for Spot Cable Advertising in New York City.

consumers as advertisers are forced to pass along the higher cost for advertising. Comcast justifies its attempts to consolidate the media and telecommunications industry by providing advertisers with the ability to "buy all cable systems simultaneously at a one stop shop,"[6] rationalizing that when consumers of Spot Cable Advertising have access to many competing MVPDs, then one stop shopping provides the market with the benefit of this efficiency. However, when Comcast seeks to use the Interconnects to exclude competitors, "one stop shopping" no longer enhances competition. Instead it provides Comcast with the unchecked ability to exercise its market power and creates the ability to extract higher prices from consumers of Spot Cable Advertising. Furthermore, Comcast is not actually providing "one stop shopping" to advertisers; Comcast's exclusionary behavior prevents advertisers from accessing all of the MVPDs and associated subscribers in a given DMA.

As described below in more detail, small businesses rely heavily on an efficient means to transact Spot Cable Advertising. Likewise, smaller MVPDs rely on robust competition among Spot Cable Advertising Representation firms to keep the revenue share costs in check. If the Comcast/TWC transaction were to proceed, smaller MVPDs, small business advertisers, and consumers would face the threat of higher costs and fewer choices. Further, the transaction would also allow Comcast to define the terms under which new cable advertising technology is introduced to the market – likely on terms that only benefit Comcast. Comcast's dominance as a result of the transaction will likely enable it to stifle any disruptive technology that would benefit consumers. Comcast would put an end to competition in both the Spot Cable Advertising market and the Spot Cable Advertising Representation market unless its proposed acquisition of TWC is subject to the remedial conditions set forth at the end of this submission.

[6] http://www.comcastspotlight.com/news/News/Comcast-Spotlight-Cutting-Out-Chaos.

Given these facts, Viamedia requests the Commission mandate the conditions discussed in depth below.

II. Background

When major cable networks such as CNBC or USA, enter into programming carriage deals with MVPDs, the MVPDs are provided with two minutes per hour (*i.e.*, four 30-second spots) to sell local advertising. It provides the MVPD with a major source of its revenue offsetting programming carriage costs and allowing local advertisers to advertise on a national network within a local geography without having to "buy" the entire country. For example, an automobile dealership or political candidate located in Tampa, Florida could purchase targeted advertising to be viewed only within the Tampa area on ESPN during the World Cup game without having to spend the funds necessary to advertise across the entire country.

Historically, national, regional, and local advertisers that would have been interested in reaching every viewer within a metropolitan area at once (*e.g.*, General Motors, or the Greater Metropolitan Chevrolet Dealers Association), would simply forego Spot Cable Advertising because they found it too cumbersome to negotiate with each individual MVPD in hopes of buying the same time slot on the same program in every system. Consequently, MVPDs missed out on this category of advertising and were left with only the most local of advertisers, who were content to advertise on only one or two systems.

To overcome this problem, some twenty years ago, MVPDs formed joint sales entities called "Interconnects," each of which serves demand for Spot Cable Advertising from regional advertisers within a particular Designated Market Area ("DMA"). The cable industry set the Interconnects up to maximize the efficient distribution of Spot Cable Advertising – benefiting both MVPDs and advertisers – while maintaining separate management of the Interconnects and MVPDs to maintain free and fair competition among MVPDs. The management of these

Interconnects was initially assigned to an independent entity or an MVPD in each market, but with checks and balances to avoid unilateral control by a dominant MVPD or any appearance of impropriety.[7] Interconnects developed as a public utility of sorts, which independent MVPDs and Spot Cable Advertising Representation firms relied on to connect with advertisers and develop their businesses. With almost universal participation of MVPDs, especially the largest MVPDs, in each Interconnect, it is not possible – or efficient - for an alternative Interconnect to exist in a given DMA. With the exception of New York City, which has two Interconnects, all DMAs have only one Interconnect.

In addition to the Interconnects, twenty years ago MVPDs created NCC, a platform to meet the demand for Spot Cable Advertising among national advertisers. Like a regional advertiser, a national advertiser sought a means to easily transact the purchase of entire DMAs and buy several markets simultaneously in one transaction. For example, General Motors may want to advertise an all-wheel drive car only in those markets where it snows. Thus, in the late 1990s, TCI (now owned by Comcast), Cox Communications, TWC, MediaOne, Katz Media Group and Comcast, formed a joint venture (NCC) to enter into agreements with MVPDs to represent them for the sale of Spot Cable Advertising to national advertisers. For example, NCC represents Comcast, TWC, and Cablevision in the New York City market for national advertisers.

The Interconnects and NCC were originally organized like cooperatives, much like a multiple-listing service in the real estate context, to bring buyers and sellers together. Access was open to all MVPDs and their chosen Spot Cable Advertising Representation firms, and all participants were treated alike, with none favored over the others. In taking these actions, the

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[7] Indeed, Viamedia understands that the cable industry used the 1979 Supreme Court decision in the *BMI vs. CBS* case as its guide to avoid antitrust illegality. (BMI is a music industry cooperative for restaurant owners and others to easily license music from artists without having to negotiate individual licenses with each artist. In effect, the MVPD was like an artist and the restaurant was like an advertiser). *See BMI v. CBS*, 441 U.S. 1 (1979).

MVPDs created a “one-stop-shopping” option that no MVPD could offer alone and enabled regional and national advertisers to buy the same advertising slot over an entire DMA or throughout the entire nation.

Meanwhile for the local advertising segment advertisers continued to have the option of negotiating individually with a given MVPD to advertise in a small subset of the market called an “ad zone”. (There are estimated 3,500 ad zones which are served by an individual “head end,” the cable industry term for data center. Each head end serves ads to the subscribers in that zone).

Just as with a multiple-listing service in the real estate context, the success of the Interconnects and NCC depended upon the participation of all (or nearly all) of the MVPDs. Without maximum participation, there could be no “one-stop-shopping” or complete market coverage for an advertiser. At the same time, the over a twenty year period, MVPDs became reliant upon participation in the Interconnects and NCC. The MVPDs and the Spot Cable Representation firms configured their businesses and made significant investment in technologies to sell Spot Cable Advertising through the Interconnects and NCC. Advertisers have been well-served by this arrangement. The amount of Spot Cable Advertising spend that comes from national advertisers (through NCC) and from regional advertisers (through the Interconnects) is a significant portion of the Spot Cable Advertising market that has grown much faster than the market overall.

Smaller MVPDs used Spot Cable Advertising Representation firms like Viamedia to enable them to participate in these sales efficiently and economically as well as provide marketing services for their commercial messaging to their subscribers. Unlike some of the large MVPDs, such as Comcast and TWC, most independent MVPDs do not want or do not have the multi-million dollar technical infrastructure in equipment, staff and expertise to run their own Spot Cable Advertising operations. Spot Cable Advertising Representation companies like

Viamedia provide the same level of expertise as the larger MVPDs and offer fully functioning turn-key sales, spot insertion, encoding, validation, IT, traffic and billing, and collection. This includes the ability for a local business to advertise in an ad zone. Independent firms like Viamedia also provide the ability for their MVPD partners to benefit from national and regional advertising revenues through agreements with NCC and participation in various Interconnects in certain DMAs.

Comcast and TWC not only operate large MVPD systems, they have created the largest and second largest of Spot Cable Advertising Representation companies, which in turn provide these services to their MVPD competitors. (Comcast's Spot Cable Advertising Representation firm is known as Comcast Spotlight and TWC's Spot Cable Advertising Representation firm is known as Time Warner Cable Media Sales). Viamedia is the largest *independent* Spot Cable Advertising Representation company in the United States representing 58 MVPD partners, but is still dwarfed by Comcast and TWC Spot Cable Advertising subsidiaries which are more than 10 times more revenues than Viamedia. All three companies compete against each other as well as other Spot Cable Advertising Representation firms today to provide MVPDs with a meaningful choice for Spot Cable Advertising Representation. If independent Spot Cable Advertising Representation firms are unable to participate in an Interconnect, then they will not be able to compete with Comcast in the future. The result is that a given smaller MVPD might be *required* to "choose" Comcast.

III. The Combined Entity Would Only Exacerbate the Challenges Already Present In The Highly Concentrated Spot Cable Advertising Marketplace

More recently, the cable advertising industry has undergone significant changes in light of increased concentration. First, most Interconnects have been forced to move away from the original independent cooperative structure and have become controlled and dominated by the largest cable operator, almost always Comcast or TWC through their Spot Cable Advertising Representation firm subsidiaries. If the proposed transaction is consummated, Comcast-TWC will control 18 of the top 25 Interconnects and over 50 percent of all Interconnects in the U.S. In addition, Comcast became the majority owner of, and likely acquired veto authority at the board level within NCC (Comcast will own 80 percent of NCC if the instant proposed transaction closes without conditions). Finally, the dominant cable operators (including both Comcast and TWC) entered the Spot Cable Advertising Representation business and began competing against smaller, independent representation companies like Viamedia to represent other MVPDs.

Having taken control of a significant number of Interconnects and as majority shareholder of NCC, Comcast has already begun excluding MVPDs and their independent Spot Cable Advertising Representation firms from the Interconnects. Other Interconnect managers do not adopt this exclusion policy. To date, after 10 years of inclusion, Comcast has kicked Viamedia and its MVPD partners out of major market Interconnects in the Midwest. In the South, Viamedia was unable to compete because Comcast refused to allow it access to one Interconnect while bundling into other markets. The result was that an MVPD had no other choice but to use Comcast for its Spot Cable Advertising Representation. By contrast, Comcast itself participates as a representative in Interconnects where it is not the Interconnect manager but represents a third party (*e.g.*, Tampa) and in these circumstances Comcast has never been excluded from any Interconnects to our knowledge.

In addition, independent Spot Cable Advertising Representation firms' access to NCC is at risk. For example, Viamedia's current contract with NCC contains an explicit threat that NCC is not likely to renew the agreement at the end of its term and that Viamedia should seek an alternative for the services that NCC provides.[8] Viamedia resisted this demand but NCC insisted, knowing full well that no alternatives exist. Further, if Comcast is allowed to acquire TWC, Comcast's dominance will be so great that no alternative to NCC could enter the market without Comcast's cooperation and participation.

Another major result of the TWC acquisition by Comcast is control over both the national and local market cable subscribers. While Comcast is spinning off over three million subscribers to Charter and Spinco, Comcast will still have over 29 million subscribers *plus* an estimated 20 million additional subscribers through Spot Cable Advertising Representation agreements with competitor MVPDs – for a total of approximately 49 million of the total 69 million cable subscribers in the U.S. Incredibly, if Comcast is permitted to enter into Spot Cable Advertising Representation agreement with Charter and Spinco, then Comcast will control advertising to approximately 57 million out of 69 million cable subscribers **– 82** percent nationally. Additionally, in the top 10 markets in the U.S., Comcast will control between 80 to 90 percent of all cable subscribers. (*See* chart below). This is on top of Comcast's ownership of broadcast stations and regional sports networks in those markets.

DMA Rank	DMA Name	Comcast-TWC Actual Subs	Total Cable HHs	% of Comcast-TWC Cable Subs in Market	Estimated Comcast-TWC Rep Subs (not including Dish and DirecTV Rep HHs)	Total % of Comcast-TWC Actual and Rep Cable Subs in Market	Interconnect Operator	Comcast - NBC/O&O
1	New York	1,870,190	6,468,090	29%	934,952	43%	1. CABLEVISION 2. TIME WARNER MEDIA	
2	Los Angeles	1,547,722	2,972,950	52%	1,281,745	95%	TIME WARNER CABLE/ADLINK	X
3	Chicago	1,362,069	2,164,940	63%	403,440	82%	COMCAST SPOTLIGHT - CHICAGO	X
4	Philadelphia	1,531,132	2,362,310	65%	602,488	90%	COMCAST SPOTLIGHT - PHILADE	X
5	Dallas-Ft. Worth	377,995	1,350,440	28%	794,403	87%	TIME WARNER MEDIA - DALLAS	X
6	San Francisco-Oak-San Jose	1,322,848	1,587,620	83%	65,368	87%	COMCAST SPOTLIGHT - SAN FRA	X
7	Boston (Manchester)	1,327,519	2,015,860	66%	524,526	92%	COMCAST SPOTLIGHT - BOST	
8	Washington, DC (Hagrstwn)	777,246	1,804,680	43%	653,260	79%	COMCAST SPOTLIGHT - WASH	X
9	Atlanta	795,966	1,415,060	56%	256,264	74%	COMCAST SPOTLIGHT - ATLANTA	
10	Houston	680,429	1,165,980	58%	63,590	64%	COMCAST SPOTLIGHT - HOUSTON	

Source: SNL Kagan Subscriber by MVPD data and Strata.

The last significant change is Comcast's control of the technology and data, which fuel the cable advertising business. Comcast owns the sales order and entry software company,

[8] Under the terms of that agreement, Viamedia is not able to include the specific language unless compelled to by a government authority.

Strata, which is the platform for the entire industry. Comcast also recently acquired Freewheel, the leading ad serving software company for the digital television industry.[9] When combined with Comcast's investment to acquire personal television viewing data from ten million television set top boxes (using Comcast's software, "Bali") and Comcast cloud-based X1 platform to acquire viewing information, Comcast's control of technology and data gives Comcast the ability to extract payments from both cable and broadcast for targeted advertising. Having one company control platforms and access to television advertising raises significant risks.

IV. The Combined Entity Would Harm Its Competitor MVPDs, As Well As Small Businesses and Consumers

If consummated, the combination of Comcast and TWC would only magnify Comcast's domination over the Spot Cable Advertising market. First, Comcast would control many of the Interconnects, including: Los Angeles, Chicago, Philadelphia, Dallas, San Francisco, Boston Washington, DC, Atlanta, Houston, Seattle, Miami, Denver, Sacramento, Portland, Pittsburgh, Raleigh, Charlotte, and one of the two Interconnects covering New York City.[10] While Interconnects only sometimes compete against each other for ad dollars, Comcast could bundle across Interconnects. In addition, given that Comcast controls these Interconnects, it will allocate more advertising time for the national and regional advertisers because of the higher margins those transactions provide for Comcast. This shift will be at the expense of local advertising. Indeed, Comcast has been downsizing its local ad sales force over the last several years. As Comcast allocates more of the fixed Spot Cable Advertising time to national and regional advertiser, the availability of Spot Cable Advertising time for local advertiser will be reduced.

[9] *See* http://online.wsj.com/articles/rivals-wary-of-comcasts-mobile-ad-prowess-1404770381.

[10] The New York City DMA is unique in that it is served by two Interconnects. One is controlled by TWC and one is controlled by Cablevision, in which Comcast participates today.

This will likely cause the cost to local advertisers for Spot Cable Advertising to rise as advertisers demand remains the same and the supply of time diminishes. Indeed, we believe that advertising agencies have already seen prices rise as a result of Comcast's market dominance.[11] The result of increasing advertising prices will result in increasing consumer prices when the advertisers are forced to pass along prices to the consumer.

Next, through the combined Spot Cable Advertising Representation businesses of Comcast Spotlight and TWC, Comcast would represent MVPDs in 38 of the top 50 DMAs.[12] It is possible, however, that publicly-available information does not show the true extent of Comcast's dominance. Thus, as noted earlier, Viamedia is pleased that the Commission has sought hard data from Comcast.

This much control provides Comcast with the ability to exclude independent Spot Cable Advertising Representation firms and their MVPD partners from Interconnects. As stated above, Comcast has already terminated Viamedia's participation in key Interconnects that it controls currently in the Midwest and denied entry into other Interconnects. We believe that Comcast took this action to force MVPDs into entering Spot Cable Representation agreements with Comcast by threatening to otherwise exclude the MVPD from the key revenue stream of regional sales that the Interconnect provides.

In testimony before the U.S. House of Representatives in May, Comcast's Executive Vice President David Cohen pledged that Comcast is "not going to exclude competitors" from

[11] *See* http://blogs.wsj.com/cmo/2014/04/09/comcast-twc-cable-ads/.

[12] Through the transaction, Comcast would add TWC's Spot Cable Advertising Representation business in Los Angeles, Dallas-Ft. Worth, Houston, Raleigh, Charlotte, San Diego, Kansas City, San Antonio, Greenville and Memphis, as well as possibly other markets. The transaction, combined with Comcast's deal with Charter, would eliminate competition in a number of other markets throughout the country, including: Los Angeles, Boston, Atlanta, Denver, Sacramento, Charlotte, Nashville, Hartford, Kansas City, Cincinnati, Louisville, Greenville and Memphis, as well as possibly other markets.

the Interconnects it controls.[13] Two months later, Viamedia and its MVPD partners are still blocked from participating in all of the Comcast-controlled Interconnects. (Viamedia and its partners do participate in a number of non-Comcast managed Interconnects, including those in Tampa, Dallas and New York City – two of which (Dallas and New York City that will be controlled by Comcast post-acquisition). In effect, Comcast leverages its control over Interconnects to gain control over all Spot Cable Advertising in that market, even if that MVPD is a direct competitor of Comcast for video subscribers and advertisers.[14] Comcast's leverage in the Spot Cable Advertising market is likely to increase with control over additional Interconnects currently managed by TWC.

Furthermore, its proposed deal with TWC would boost Comcast's ownership share of NCC from 60 percent to 80 percent. As noted above, NCC already has threatened to cut off Viamedia's access to NCC, which would exclude Viamedia from offering national Spot Cable Advertising to its MVPD partners. Comcast's action portends continued similar anti-competitive activity toward other smaller, independent companies. Conferring an 80 percent ownership interest on Comcast would seal that outcome.

Given these facts, if the proposed merger is consummated, Comcast would be in a stronger position than ever to pressure smaller MVPDs, against which it competes to an appreciable extent for Spot Cable Advertising revenue, to use Comcast as their Spot Cable Advertising representative instead of using an independent representation firm like Viamedia. It

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[13] U.S. House of Representatives Judiciary Subcommittee on Regulatory Reform, Commercial, and Antitrust Law Hearing on the Comcast-Time Warner Cable Merger (May 8, 2014).

[14] Indeed, as noted by the New York State Department of Public Service staff in its comments in regards to Comcast and TWC's joint petition to transfer control in that state and the Department of Justice's Competitive Impact Statement in connection with Comcast's acquisition of NBC-Universal, "Comcast has both the incentive and experience to engage in exclusionary practices which may harm competitive providers of video programming and competitive video distributors. The incentives and success of exclusionary practices are heightened with respect to new and innovative market entrants." *Joint Petition of Time Warner Cable, Inc. and Comcast Corp. for Approval of a Holding Company Level Transfer of Control*, Case 14-M-0183, Comments of the New York State Department of Public Service Staff at 37 (Aug. 8, 2014).

would become nearly impossible for a smaller MVPD to refuse Comcast's offer to become their Spot Cable Advertising Representation firm when Comcast (1) controls most of the Interconnects, (2) controls NCC, (3) excludes independent Spot Cable Advertising Representation firms like Viamedia from both Interconnects and NCC, (4) owns major content providers (*i.e.*, one of the principal broadcast networks (NBC), 10 owned-and-operated local NBC and 20 Telemundo broadcast stations with which MVPDs need to contract, 24 basic cable networks, 10 regional sports networks, and six regional news networks), and (5) would have just gained additional power in all of these dimensions through acquisition of TWC.

The proposed deal would effectively remove the ability of independent firms to compete against Comcast in the Spot Cable Advertising Representation market and force independent MVPDs into the predatory arms of Comcast Spotlight, notwithstanding the clear conflict of interest between Comcast and the smaller MVPDs. Not only would this place smaller MVPDs at a serious disadvantage, it would result in higher costs for small business advertisers that rely on Spot Cable Advertising. These higher costs would be passed on to American consumers.

V. The Combined Entity Will Dominate Future Advertising Markets

Comcast's present dominance generally and control of the Spot Cable Advertising market acquired as a result of the proposed merger, will enable it to effectively control the deployment of emerging advertising technology for broadcast television, cable television, and online video. The new combined entity will have unprecedented leverage to control access to these future advertising services.

At present, MVPD entities invest heavily in video-on-demand and over-the-top offerings, which enables consumers to choose their favorite programming whenever and wherever they want. As a result, TV advertising technologies are becoming more innovative and thus beginning to mirror the customized video experience. This nascent "session-based" experience creates and delivers an individual programming "stream" of a favorite NBC or TNT program directly to an individual home. In addition, advanced digital advertising technologies allow operators to dynamically allocate Spot Cable Advertising inventory between national (NCC), regional (Interconnect) and local inventory. In connection with these advances, the industry also uses viewing and demographic databases to dynamically send unique advertising to individual homes (called "addressable advertising" or "dynamic ad insertion").

These new technologies allow broadcast television to become more targeted and allow advertisers to focus advertising to individual households through on-demand programming which allows for the replay of broadcast or cable programming. Programmers can thus charge higher rates for targeted advertising. Advertisers benefit from having their ads placed before the right audience. Advertisers achieve better post-campaign metrics, regardless of what device the consumer is using to watch his or her content, whether he or she watches television live or time shifted (*e.g.*, by using VOD or a DVR). Like the computer-to-computer world of programmatic advertising for the Internet, television or video will be driven by audience, also known as impression-based/session-based advertising.

In conjunction with its control of the Spot Cable Advertising Market and other advertising markets, Comcast has acquired key gate-keeping technology that could affect future development of these markets. Comcast owns or has investments in advanced advertising technology companies that sell their services to programmers and other cable companies such as Strata (the only order/entry software system for cable advertising), Freewheel (the leading over the top video ad serving company), Black Arrow (the leading dynamic ad insertion company) and Visible World (a leading addressable advertising company). Comcast also has the personal viewing data on tens of millions of households.

Comcast's dominance will allow it to unilaterally design and decide the new rules and procedures for the Spot Cable Advertising sector. In turn, Comcast will have the unbridled ability increase costs and thus limit the ability of other entities to enter, compete, or both for technology that affect not only Spot Cable Advertising, but also other video advertising markets including broadcast. Comcast may control the technology crucial for future video advertising: the available video ad inventory on TV and devices, the sales organizations that sells this inventory, the technologies that service and execute for buyers and sellers and enable access to consumers. Comcast's demonstrated willingness to use key choke points in the Cable Spot Advertising market to exclude competitors in the ad representation business will have far-reaching consequences in the future TV, video and Internet advertising markets as well.

Interconnects are the critical "beachhead" for today's cable advertising as well as to deploy the advanced advertising of the future. These Interconnects are not "owned" by Comcast but Comcast is supposed to manage these Interconnects at the pleasure of all of the MVPDs in a DMA. It is in the public interest for there to be open access to Interconnects to maintain robust competition in Spot Cable Advertising to ensure that consumers benefit from these technology changes in the future.

VI. The Commission Must Condition Its Approval of the Proposed Merger

To recap:

- Comcast, Time Warner Cable and Viamedia all compete for Spot Cable Advertising Representation.
- MVPDs want choice regarding Spot Cable Representation.
- Interconnects and NCC were designed to be open to all.
- MVPDs and Viamedia invested in their businesses in reliance on their participation in the Interconnects and NCC.

- Comcast appropriated control over the Interconnects and NCC, entered the Spot Cable Advertising Representation firm business, and then began to exclude Viamedia and others from Interconnects so that they cannot successfully compete in the representation business.

- The merger of Comcast and TWC would allow Comcast to dominate both the Spot Cable Advertising business and the Spot Cable Advertising Representation business effectively eliminating any competitor to Comcast Spotlight in the Spot Cable Advertising Representation business.

- The future of video advertising on all devices (TV, computers, tablets, smartphones) could be controlled by Comcast, a company with a history of denying open access to Interconnects.

There is no question that the proposed deal would be anticompetitive. Comcast participated in the development of the Interconnects and NCC, and, like all of the industry participants, adapted to these open and non-discriminatory cooperative ventures. Comcast would now change the rules on the smaller MVPDs and their independent representatives, all of which compete against Comcast. This tactic of co-opting competition offends fairness and is contrary to the public interest. It also violates the antitrust laws.[15]

Therefore, in light of these factors, and to ensure fair competition in this important sector of the global media marketplace, Viamedia requests the Commission to exercise its authority to impose conditions on the combined entity. While behavioral conditions may be appropriate in some circumstances, given the current state of the cable advertising market discussed above, Viamedia respectfully offers the conditions set forth below. These conditions are transaction-specific and would better ensure competition in the Spot Cable Advertising marketplace and those small businesses and consumers that benefit from it.

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[15] *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992); *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); *Negotiated Data Solutions LLC ("N-Data")*, Dkt. No. 4234, ___ F.T.C. ___ (Sept. 23, 2008). Indeed, exclusion of a competitor from such an entity, where participation is essential to its ability to compete, violates the antitrust laws whether or not that competitor ever was included at all. *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973); *Associated Press v. United States*, 326 U.S. 1 (1945); *United States v. Terminal Railroad Ass'n*, 244 U.S. 383 (1912). *See also United States v. National Association of Realtors*, No. 05-C-5140 (N.D. Ill. 2008) (consent judgment requiring inclusion in multiple listing service); *United States v. Consolidated Multiple Listing Service, Inc.*, No. 3:08-CV-01786 (D.S.C. 2009) (same).

Conditions:

1. Prohibit Comcast from taking any steps to: (a) exclude any Spot Cable Advertising Representation firm from any Interconnect, and (b) prevent NCC from doing business with any Spot Cable Advertising Representation firm on fair, reasonable, and non-discriminatory terms.

2. Prohibit Comcast from controlling, representing or managing Interconnects.

3. Require that Comcast transfer majority control over NCC to ensure that NCC is managed independently and offers the same fair, reasonable, and non-discriminatory terms to all MVPDs and their chosen Spot Cable Advertising Representation firms.

4. Require Comcast to transfer either its own or TWC's Spot Cable Advertising Representation firm business

5. Prohibit Comcast from representing Spot Cable Advertising for the subscribers Comcast or TWC is transferring to Charter and Spinco.

6. Require that the combined entity and any affiliates involved in cable advertising file **quarterly report**s with the Commission detailing its activities within the Spot Cable Advertising and Spot Cable Advertising Representation markets and demonstrating compliance with these conditions for a period of **eight years** following consummation of the transaction.

VII. Conclusion

To preserve the benefits of competition in the Spot Cable Advertising marketplace, Viamedia respectfully petitions the Commission to condition the proposed merger.

Mark Lieberman

President and Chief Executive Officer
Viamedia, Inc.